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April 14, 2011

EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Sandwich Isles Communications, Inc., Petition for Declaratory
Ruling, WC Docket No. 09-133

Dear Ms. Dortch:

The attached information is provided pursuant to informal oral FCC staff inquiries made to the National Exchange Carrier Association, Inc. ("NECA"). NECA is submitting both a redacted public version and confidential version of such information pursuant to the protective order adopted in the above-captioned proceeding.

Pursuant to 47 C.F.R. § 1.1206, please include this ex parte filing in the above-referenced docket. Please let me know if you have further questions.

Sincerely,

/s/ Gregory J. Vogt

Gregory J. Vogt
Counsel for National Exchange Carrier Association, Inc.

cc: Austin Schlick
Sharon Gillett
Diane Griffin Holland
Pamela Arluk
Jennifer Prime

Additional Information Concerning NECA Review and Guidelines

On May 7, 2008 Sandwich Isles Communications, Inc. (“SIC”) provided projected cost figures for its new transport network leased from Paniolo including both undersea and terrestrial facilities to reach its wire centers: at that time SIC represented that the terrestrial costs of the network would represent approximately [REDACTED] percent of the total costs of the new transport network.¹ In 2009, SIC submitted cost support information to NECA to enable NECA to prepare its carrier access tariff that was to become effective on July 1, 2009. NECA carefully examined the information provided by SIC. At that time, SIC submitted detailed information of the costs it expected to incur. These data, which are attached to this ex parte as Appendix 1, indicate that about [REDACTED] percent of the Paniolo lease costs were related to the terrestrial portion of the network, [REDACTED] percent were for the submarine cable portion of the network, and the remainder was comprised of miscellaneous costs such as land and buildings.

In 2009 NECA evaluated the total project comprising the submarine and terrestrial based portions of SIC’s new leased transport network, although for convenience sake, the network was often described as a submarine cable system or the Paniolo lease costs. In NECA’s view, the FCC’s “used and useful” doctrine applies with equal force to both the construction and operation of a submarine cable system and a fiber-based terrestrial network. NECA concluded that the overall cost of the new transport network leased from Paniolo was not “used and useful” because it involved extremely high costs that could not be justified given the fact that SIC had approximately [REDACTED] access lines and approximately [REDACTED] DSL subscribers. Although SIC claimed that it would have 20,000 customers in the future, NECA believed that such estimate could not possibly be reached in the foreseeable future given the rate of construction of new housing in the Hawaiian Home Lands, particularly in light of the size and growth rates of SIC’s historic customer base.² NECA fully described its questions about SIC’s demand figures in NECA’s comments filed in this proceeding.³ The Bureau itself concluded that SIC failed to justify any of its projected demand figures.⁴

A map of the location of the submarine cable landing sites of Paniolo and Hawaiian Telcom is attached as Appendix 2. The information on these maps is based on

¹ Comments of the National Exchange Carrier Association, Inc. (NECA), WC Docket No. 09-133, Appendix F, at 4 (response to question 8) (filed Aug. 31, 2009) (“NECA Comments”).

² SIC also said in the year 2000 that it expected to serve [REDACTED] customers, but its actual customer numbers have not materially changed in a ten-year period. NECA Comments, Appendix O, at 2.

³ NECA Comments at 19-20. In fact, the costs were extremely high even if the 20,000 projected demand figures were reasonable.

⁴ *Sandwich Isles Communications, Inc., Petition for Declaratory Ruling*, Declaratory Ruling, WC Docket No. 09-133, DA 10-1880, ¶ 22 (Wir. Comp. Bur., rel. Sept. 29, 2010) (“WCB Declaratory Ruling”).

maps submitted on the record by SIC and other publicly available data. The additional data provided on these maps is an approximation of relevant geographic locations from information available to NECA.⁵

As part of its review of the transport network, NECA also questioned why SIC decided to lease 100 percent of the network from Paniolo, rather than leasing only that portion of the system that it required to serve its customers in light of realistically expected demand. SIC did not provide a sufficient justification to NECA for its decision to lease 100 percent of the cable's capacity, especially given that carriers often partner with each other in order to share the costs of expensive networks.

NECA believed that SIC's estimates of capacity needs for facilities were seriously overstated. For instance, [REDACTED]

[REDACTED] Furthermore, in evaluating existing capacity, [REDACTED]

[REDACTED]. This provided a serious disconnect between its actual facilities and what it claimed it needed between the various Hawaiian islands.⁶

NECA did not conduct an engineering study of the transport network. Rather, it sought advice from an independent engineer on how, based on demand figures, to estimate the size of network facilities that would be needed to accommodate the demand SIC projected as part of its cost information. When NECA applied the demand figures provided by SIC to the information supplied by the engineer, the resulting facility needs were substantially lower than the capacity SIC was previously leasing from Hawaiian Telcom. NECA therefore decided not to use the information provided by the outside engineer in evaluating the SIC cost support materials.

Instead, NECA used as a proxy an estimate of the reasonable costs that should be included in cost support. This estimate was based on the existing lease costs SIC incurred from Hawaiian Telcom, approximately \$1.1 million annually, and NECA increased this allowance based on the then-current demand figures provided by SIC and average growth rate in DSL demand and speed characteristics for all pool members, which resulted in \$1.9 million annually. NECA used this average growth projection

⁵ Letter from David Cosson, Counsel to SIC, to Marlene H. Dortch, FCC, WC Docket No. 09-133 (filed Nov. 13, 2009).

⁶ It should be noted that SIC did not inform NECA of the level of traffic that was traversing any individual fiber pair and the nature of such traffic. An evaluation of demand projections would have been necessary to determine how many fiber pairs would have been necessary in these circumstances. NECA did not perform this analysis because the overall level of costs was much higher than what it believed was used and useful under FCC policy.

notwithstanding the fact that actual SIC demand figures historically appeared to be lower than average pool DSL growth rates.⁷

In its petition for reconsideration SIC for the first time suggests that NECA Spare Fiber Guidelines require that 100 percent of its network transport costs be included in NECA's traffic sensitive pool.⁸ That claim misunderstands the nature of the guidelines in general, and the Spare Fiber Guidelines in particular. The Spare Fiber Guidelines is one example of NECA cost guidelines that it has published for a number of topics that are designed to provide guidance to member companies on how to comply with the Commission's rules. NECA describes these guidelines to its members as "recommended interpretations of cost-related topics" that "should help companies comply with FCC rules and orders." See NECA website advice included as Appendix 3. In particular, the Spare Fiber Guidelines are designated as "cost reporting guidelines" and are provided to address "the provision in the FCC rules to assign facilities to categories that are spare fiber cable and wire facilities (C&WF) plant." Spare Fiber Guidelines at 1.

It is important to note that the Spare Fiber Guidelines are only intended to address the cost categorization issue for separations purposes.⁹ There are other FCC rules and policies that also must be applied in establishing interstate access rates. For instance, the used and useful doctrine would be applied first to determine whether the investment should be included in the costs of providing regulated telecommunications service. Secondly, if the particular investment is found to be used and useful, then the carrier must determine whether the investment is expected to be used for regulated or non-regulated purposes. The portion of these costs that are determined to be for regulated services are determined in accordance with the FCC's cost allocation rules.¹⁰ Once the costs are determined to be regulated, they are then assigned to cost categories in accordance with Part 36 of the Commission's rules. The Spare Fiber Guidelines were never intended to be a complete statement of how to comply with all Commission rules, just the cost categorization rules.

The Commission has not reviewed NECA's cost guidelines, which are simply NECA's interpretations of FCC rules and regulations. Therefore, if a member company disagrees with a particular guideline, it should request a declaratory ruling from the Commission as to whether NECA's guidance is a proper interpretation of Commission rules. The cost guidelines do not guarantee to the member company that it can rely on a

⁷ It should also be noted that SIC never demonstrated to NECA that services from Hawaiian Telcom were inadequate or would be insufficient in the future to handle expected demand levels.

⁸ Sandwich Isles Communications, Inc., Petition for Reconsideration, WC Docket No. 09-133 (filed Oct. 29, 2010), Exhibit A (Harper Declaration), Exhibit A ("Spare Fiber Guidelines").

⁹ 47 C.F.R. Part 36.

¹⁰ 47 C.F.R. § 64.901.

cost guideline, but rather it is only the FCC that can confirm the correct interpretation of FCC rules.

As NECA has indicated, SIC has access to all of NECA's cost allocation guidelines. NECA's guidelines are made available to all member companies from a database that is accessible from NECA's website. Access to that database is restricted to member companies through use of NECA security procedures, such as through use of a password, and SIC has such secured access. SIC can access every NECA guideline from this members-only database and can either print out the guidelines and provide them to its attorneys, which is apparently how SIC's lawyer became aware of the Spare Fiber Guidelines, or make online access available to its attorneys through the same security procedures that SIC follows.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

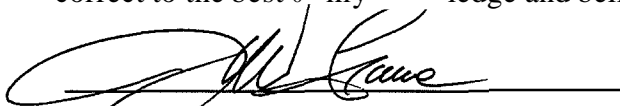
In the Matter of)	
)	
Sandwich Isles Communications, Inc.)	WC Docket No. 09-133
)	
Petition for Declaratory Ruling)	

Declaration of James W. Frame

I, James W. Frame, am Vice President of Operations for the National Exchange Carrier Association, Inc. I have held my current position since October 1, 1997.

I have reviewed the foregoing Additional Information Concerning NECA Review and Guidelines.

I declare under penalty of perjury that the information contained therein is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'J. W. Frame', is written over a solid horizontal line.

James W. Frame

April 14, 2011

APPENDIX 1

APPENDIX 2

APPENDIX 3



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Cost Issues

Cost [Issues](#) can emerge from;

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- New FCC rules
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When [an issue](#) IS [finalized](#), It IS mduded in the NECA Cost [Issues Manual](#). [Cost companies](#) are required to follow Cost Issues,

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Informational Papers & FAQs

[Contain](#) NECA's recommended [interpretations](#) on [cost-related topics](#)

Provide [general guidelines](#) on [accounting, separations and](#) cost reporting procedures without the speCific requirements of a [Cost Issue](#)

Should help [companies](#) comply with FCC [rules and](#) orders.

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